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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

ELAINE CHIU,

Plaintiff and Appellant,

v.

SHI HYUN KIM,

Defendant and Respondent.

A119756

(City & County of San Francisco
Super. Ct. No. CGC-05-443076)

The present appeal is before us following a trial before the court and judgment in favor of defendant in plaintiff's action for breach of contract, conversion, fraudulent concealment, and an accounting. Plaintiff claims that the evidence fails to support the trial court's findings. She also objects to evidentiary rulings by the trial court. We conclude that the trial court's findings on the various causes of action brought by defendant are supported by substantial evidence. We also conclude that plaintiff has failed to establish any errors associated with the admission or exclusion of evidence by the court. We therefore affirm the judgment.

STATEMENT OF FACTS

Plaintiff and defendant were both involved in other business ventures when, in 1996, they entered into an informal oral agreement (the oral agreement) to become partners in the sale of merchandise, primarily clothing, imported from China. By October

of 1997, they formed a corporation known as Big K International, Inc. (Big K),¹ to import products acquired through plaintiff's trusting business contacts in China. The merchandise was then sold through Big K and a preexisting separate clothing wholesale outlet defendant alone owned called BK Sportswear. Pursuant to the agreement between the parties, defendant became the president of Big K and owned 51 percent of the stock of the company. He also maintained all the financial records for the company. Plaintiff was the vice-president and secretary of the corporation, and owned the remainder of the stock. Plaintiff and defendant agreed to split equally the proceeds from the sale of the merchandise by Big K after payment to the Chinese manufacturers. BK Sportswear remained "solely" defendant's business.

Between October of 1997 and the beginning of 2004, Big K and BK Sportswear operated at the same location at 2565 Third Street in San Francisco,² although they remained distinct business entities, with separate printing and embroidery rooms within the building, as well as separate inventory, records, employees, and tax returns.³ BK Sportswear sold imported T-shirts and sweatshirts, and operated a silk-screening or printing business associated with importation and sale of the T-shirts. The T-shirts were then sold in tourist shops in Chinatown and Fisherman's Wharf. Big K imported "completely different merchandise" for sale, primarily polar fleece jackets and other sportswear. Big K also performed "embroidery work" on the imported merchandise and for local clothing fabricators such as SFO Apparel in San Francisco. Imported inventory was received from China at a warehouse at the Third Street location, stored there, then distributed by defendant through Big K. Plaintiff arranged for the importation of products from China and guaranteed the payments to the merchants in China. The

¹ Big K was operated very loosely as a corporation. Plaintiff and defendant held meetings periodically, but no minutes were kept. Stock certificates were issued, but no by-laws were drafted.

² Defendant operated BK Sportswear at the same location before his partnership with plaintiff.

³ Testimony was also received that some of the imported inventory was stored for both Big K and BK Sportswear in a single room in the warehouse.

merchants, being relatives or acquaintances of plaintiff, shipped the products on credit. Defendant was responsible for making payments to the Chinese merchants through plaintiff. Defendant also paid all of the Big K employees through an account at Bank of America.

Evidence was presented that the merchandise imported through plaintiff's contacts in China was also delivered by a freight forwarder to a corporation owned by plaintiff known as "Cherry Way" or "Cheery Way" at 2565 Third Street in San Francisco.⁴ Plaintiff arranged for the deliveries, but defendant was named as the primary contact person for delivery to the Cherry Way business at the Third Street address. Shipments of merchandise imported by Cherry Way for delivery to other clients or business associates of plaintiff did not have defendant as the "contact person for delivery." Some shipments were also sent by Cherry Way to a warehouse in Redwood City for storage there. The payments for all of these shipments of merchandise were made by Cherry Way rather than defendant.

Defendant's wife, Mrs. Kim,⁵ performed most of the accounting and bookkeeping services for both Big K and BK Sportswear. Mrs. Kim testified that defendant provided her with invoices for "all cash sales and checks" that were entered into the computer and recorded in the separate books for Big K and BK Sportswear. The invoices for purchases by Big K were often not recorded until the end of each year. Plaintiff complained that she repeatedly asked defendant for an accounting and corporate records of the businesses, which he never provided to her. Defendant asserted in his testimony that plaintiff intimately participated in the business and was regularly on the premises.

According to Mrs. Kim, between 1997 and 2004, BK Sportswear was operating with a net profit of between 45 and 50 percent, whereas Big K was "continuing to lose" money. The costs for the embroidery operation of Big K were greater than the costs of

⁴ We will refer to it as Cherry Way, as plaintiff did at trial. Plaintiff used the Cherry Way business to import merchandise from China before her partnership with defendant was created.

⁵ We will refer to defendant's wife as Mrs. Kim, which she stated at trial is the name she prefers.

printing incurred by BK Sportswear, so BK Sportswear had a greater profit margin. By 2004, Big K was not operating profitably, and owed money to the Chinese vendors. Instead of making timely payments as he had done in the past, defendant attempted to pay the balances due to the vendors slowly, “over time.” Both defendant and plaintiff ultimately took out personal loans to make payments on the accounts of Big K.

By the end of 2004, the parties were embroiled in a dispute over the continued losses of Big K and payment of the outstanding debts owed to the Chinese merchants. Plaintiff testified that she was asked by the Chinese merchants to collect money from defendant to pay them for the imported products. After defendant moved the business to Oakland in April of 2004, he stopped making any payments to plaintiff. Defendant testified that he believed, based on representations by plaintiff, that the payments he made satisfied all of the outstanding debts to the Chinese merchants.

By late in 2004, plaintiff and defendant decided to dissolve their partnership and terminate the Big K partnership business. Defendant prepared a document entitled “Assets & Liabilities Split Agreement” (the dissolution agreement), which they both signed on December 28, 2004. According to the dissolution agreement, Big K was dissolved and the parties “split” the assets and liabilities of the company as follows: defendant took possession of the embroidery machines and assumed financial responsibility for the outstanding loan from Washington Mutual Bank in the amount of \$34,203.97; plaintiff took possession of 500 boxes of merchandise and was responsible for repayment of a loan from Bank of the West in the amount of \$65,053.60.

Plaintiff testified that during their dissolution negotiations defendant orally represented to her that he would be “responsible for all the debt in China.” According to plaintiff, she did not realize until her husband told her after the agreement was signed that it failed to obligate defendant to repay all the still-outstanding debts to the Chinese merchants. Plaintiff’s husband told her that defendant “cheated” her. At plaintiff’s request, her husband then added a provision to her copy of the agreement that specified defendant was responsible for all business transactions or money owed by Big K to two named Chinese business entities. Plaintiff testified that she sent the modified agreement

to defendant for his approval. Defendant testified that he never approved the modification nor even received it until after the present action was filed. According to defendant's testimony, he "paid off" all the known debts to Chinese manufacturers for products supplied to Big K and BK Sportswear.

Plaintiff presented expert opinion testimony from accountant Robert Mazur following his review of the books, statements, contracts and other financial records of Big K and BK Sportswear from 1995 through 2003. Mazur also compared the records to the invoices and purchases of those companies to determine if all expenses and revenues had been reported. His examination revealed that some cash sales were not reflected on the books of the companies. Mazur offered several opinions based on his examination of the records: the total of the recorded invoices for purchases from China was \$905,580, while the total of the invoices that "should have been recorded" was \$1,342,720; the total of the "unrecorded China invoices" was \$437,141, so that plaintiff was entitled to \$218,808 as her "proportional share of that;" a total of \$358,131 of "additional purchases" were not recorded on the books of either company, of which plaintiff was entitled to a proportional share of \$175,484; and, plaintiff was entitled to damages of \$113,778 for lost or unstated profits using combined income and expense ratios for both companies. Thus, Mazur testified, plaintiff was damaged in the total amount of \$508,070.

Hak Chon Lee testified as an accounting expert for defendant. He acted as defendant's accountant, and reviewed the tax returns, ledgers and accounts for Big K and BK Sportswear for the years 1994 through 2004. He also reviewed the financial records for the Cherry Way business operated by plaintiff. Lee testified that Big K had a *gross profit* of 25 to 30 percent for the years in operation, but suffered a *net loss* of an average of \$10,000 per year, and a net negative cash flow each year. His opinion was that the losses incurred by Big K were primarily attributable to heavy capital expenditures for embroidery equipment and a more labor intensive business operation. He also testified that the income of Big K dropped considerably beginning in 2003 due to the termination of a critical embroidery contract with SFO Apparel, and by 2004 Big K was operating at

a “significant loss.” Lee testified that in contrast BK Sportswear was separately operated by defendant at a consistent although not considerable net profit between 1997 and 2004. Lee classified the debts and losses of Big K as those of the corporation, not an individual. He also testified that some of the product invoices listed on the ledger sheet were issued to Cherry Way, and those liabilities therefore belonged to that company, rather than Big K or BK Sportswear. Lee offered the opinion that Mazur’s figures for the damages caused to plaintiff by defendant were unreliable because he did not take into account the “two separate businesses,” the additional invoices issued to Cherry Way, and the fact that deliveries of product were in some instances not properly specified – that is, financial records did not indicate which of the three separate businesses actually received and sold the imported merchandise.

DISCUSSION⁶

I. The Trial Court’s Finding on the Breach of Contract Cause of Action.

Plaintiff challenges several of the trial court’s findings, the first of which is that defendant did not breach the oral agreement between the parties. Plaintiff argues that the

⁶ Before proceeding to examine the individual claims of error presented by plaintiff, we point out that we will not confront or resolve several grievances that have been discussed at some length in plaintiff’s briefs: the excessive length of the trial and the posttrial proceedings before a final judgment was entered; the failure of the trial court to take adequate notes; the failure of the court to control the objections of counsel or the cross-examination of witnesses. Our primary responsibility as an appellate tribunal is to correct what are alleged to be trial court errors. (See *Delmonico v. Laidlaw Waste Systems, Inc.* (1992) 5 Cal.App.4th 81, 84.) We are not here to respond to superfluous condemnation of the trial court’s practices that do not constitute error. We also must abide by the “fundamental principle of appellate jurisprudence in this state that a judgment will not be reversed unless it can be shown that a trial court error in the case affected the result.” (*In re Sophia B.* (1988) 203 Cal.App.3d 1436, 1439.) “Only when an error has resulted in a miscarriage of justice will it be deemed to be prejudicial so as to require reversal.” (*Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 114.) A miscarriage of justice is not found “unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result.” (*Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, 1841; see also *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 606.) “Prejudicial error must be affirmatively demonstrated and will not be presumed.” (*People v. Bell* (1998) 61 Cal.App.4th 282, 291.) Plaintiff’s criticism of the trial court’s notetaking, the delays in the proceedings, and the treatment of objections by counsel or examination of witnesses are not errors that have been shown by plaintiff to have affected the ultimate result of the case. Hence, we will not separately discuss those complaints. We will confine our discussion of the issues to those that focus upon distinct alleged prejudicial errors.

evidence proves an oral agreement between the parties to “split the profits generated from the sale of product imported from China,” and defendant’s breach of the agreement by failing to “pay the Chinese manufacturers” for merchandise received by Big K and BK Sportswear, and failing to pay plaintiff her share of the profits from the ultimate sale of the merchandise.

Our review is quite constrained. We are mandated to review the trial court’s findings “under the substantial evidence standard.” (*Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 774.) “We presume the record contains evidence sufficient to support the judgment, consider the evidence in the light most favorable to the judgment, and resolve all conflicts in favor of the judgment.” (*County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 540.)

Our review is also impacted by the failure of plaintiff to furnish us with an unbiased, complete statement of the facts. Considerable evidence was presented at trial by both sides, but with very minor exceptions plaintiff’s brief has recited exclusively the evidence favorable to her claims on appeal.⁷ We have not been given a fair and thorough statement of the material evidence presented on the challenged findings, but rather a one-sided version favorable to plaintiff.

“Where the appellant challenges the sufficiency of the evidence, the reviewing court starts with the presumption that the record contains evidence sufficient to support the judgment; it is the appellant’s affirmative burden to demonstrate otherwise.” (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 951.) “Plaintiff is required to set forth *all* of the material evidence, and not merely his own.” (*Kanner v. Globe Bottling Co.* (1969) 273 Cal.App.2d 559, 564.) “The appellant’s brief must set forth *all* of the material evidence bearing on the issue, not merely the evidence favorable to the appellant, and must show how the evidence does not sustain the challenged finding.” (*Garlock Sealing Technologies, supra*, at p. 951.) “ ‘He

⁷ Plaintiff has briefly referred to some of defendant’s testimony and that of his expert, but only to refute their credibility as witnesses or to buttress plaintiff’s argument on appeal.

cannot shift this burden onto respondent, nor is a reviewing court required to undertake an independent examination of the record when appellant has shirked his responsibility in this respect.’ [Citation.]” (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.)

“Moreover, an attack on the evidence without a fair statement of the evidence is entitled to no consideration when it is apparent that a substantial amount of evidence was received on behalf of the respondent. [Citation.] Thus, appellants who challenge the decision of the trial court based upon the absence of substantial evidence to support it ‘ “are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error is deemed waived.” [Citations.]’ [Citation.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Particularly where, as here, a great deal of conflicting and quite confusing evidence was presented, plaintiff’s failure to furnish us with a comprehensive and impartial recitation of the pertinent facts justifies a forfeiture of her claims of insufficiency of the evidence on appeal. (See *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881; *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.*, *supra*, 148 Cal.App.4th 937, 951; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 281–282; *Dietrich v. Dietrich* (1964) 226 Cal.App.2d 650, 652; *Davis v. Lucas* (1960) 180 Cal.App.2d 407, 409–410; *Schaefer v. Berinstein* (1960) 180 Cal.App.2d 107, 123; *Pomona Golf & Country Club v. Eaton* (1960) 179 Cal.App.2d 376, 382.)

In any event, we discern in the record substantial evidence to support the court’s finding that defendant did not breach the oral partnership agreement. The record shows indisputably that the parties entered into an informal agreement to import merchandise from China through plaintiff’s contacts there, operate *Big K* as partners, and share equally any profits generated from that business. Evidence was also presented, primarily in the form of defendant’s testimony but also corroborated by other witnesses, that both before and after the oral agreement *BK Sportswear* functioned as a separate business entity. Defendant testified that the “whole purpose” of the oral agreement was to maintain “separation” of the two businesses and create *Big K* to serve as a business conduit for their new partnership. Although *Big K* and *BK Sportswear* both obtained products from

China which were often stored at the same warehouse, and sold apparel locally, they were distinctive in nature, with “completely different merchandise,” and remained separate in identity after the parties entered into their oral agreement. In addition, plaintiff continued to operate her own business, Cherry Way, which received and sold some of the merchandise imported from China. As we read the record, the court correctly found that Big K and BK Sportswear were separate businesses, with only the former the subject of the oral partnership agreement. BK Sportswear remained solely under the ownership and control of defendant. Thus, defendant did not breach the oral agreement by failing to share the profits of BK Sportswear with plaintiff.

As to plaintiff’s complaint that defendant “failed to split the profits” from the operation of Big K with her and “refused to pay the Chinese manufacturers for the product they had imported after he sold the product,” we have been presented with a classic case of conflicting evidence. The parties offered differing expert opinion testimony on the profits generated by Big K. Plaintiff and defendant also provided diverse accounts of which business entity received and sold shipments of goods, and how much money was owed to the Chinese merchants upon termination of the business operations of Big K. Further, plaintiff did not offer convincing proof that any of the Chinese merchants made claims or filed actions for unpaid accounts.

The trial court found defendant’s evidence credible and plaintiff’s testimony “unsupported by evidence and ultimately not credible.” The court also discounted the testimony of plaintiff’s expert as “based on unsupported facts.” We cannot reweigh the evidence or disturb the trial court’s credibility determinations. (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 544; *Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Further, “ “ “To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a

determination depends. [Citation.]” [Citations.]’ [Citations.]” (*Bradley v. Perrodin* (2003) 106 Cal.App.4th 1153, 1166; see also *Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 823.) Our review of the record persuades us that defendant’s testimony is not inherently impossible or implausible, and cannot be discounted on appeal. The trial court’s finding that plaintiff failed to satisfy her burden of proving breach of the contract by defendant may be subject to some evidentiary dispute, but it is supported by substantial evidence.

II. The Trial Court’s Finding on the Conversion Cause of Action.

Plaintiff makes the nearly identical claim that the trial court erred by failing to enter judgment in her favor for conversion. She repeats her argument that defendant had the obligation pursuant to the oral agreement to “split the net profits 50/50” with her, and from that premise argues that his failure to do so constituted conversion. We have found substantial evidence to support the findings that plaintiff was not entitled under the oral agreement to a share of the proceeds of the operation of the separate BK Sportswear business, and that defendant did not wrongfully withhold profits or fail to pay the creditors of Big K. Substantial evidence in the form of the testimony of defendant’s expert Lee also exists to find that defendant was not required to pay plaintiff additional profits earned by Big K over the years, because there were none. We therefore conclude that the court properly entered judgment in favor of defendant on the conversion cause of action.

III. The Trial Court’s Finding on the Fraudulent Concealment Cause of Action.

We turn to plaintiff’s related complaint that the evidence fails to support the judgment in favor of defendant on the fraudulent concealment cause of action. She maintains that the evidence proves defendant committed fraudulent concealment by failing to inform her of material facts: that he was “not making payments on the amount owed to the Chinese manufacturers” as he agreed to do; that he was not “keeping proper business records” or maintaining an “accurate accounting” of profits and losses of the two businesses; that she was entitled to “her share of the net profits generated by the two

businesses” the parties were operating together; and, that cash sales were not “recorded in the accounting books and records for both companies.”

We again adopt the refrain that conflicting evidence cannot be the basis upon which to reverse findings by the trial court. We must consider all of the evidence and resolve all evidentiary conflicts in favor of defendant as the prevailing party. (*Estate of Carter* (2003) 111 Cal.App.4th 1139, 1154.) We “ ‘accept as true all the evidence and reasonable inferences therefrom that tend to establish the correctness of the trial court’s findings and decision, and resolve every conflict in favor of the judgment. . . .’ [Citations.]” (*DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 189–190.) As we have observed, substantial evidence supports the findings of the trial court that the oral agreement did not grant plaintiff a share of the proceeds of the operation of BK Sportswear, Big K did not earn profits which were withheld from plaintiff by defendant, and defendant did not intentionally fail to pay outstanding debts owed by Big K to Chinese merchants. While plaintiff testified that despite her numerous entreaties defendant refused to provide her with an accounting, defendant and his wife testified to the contrary that accounting records were kept, and plaintiff was informed of business operations of Big K to the extent she requested, or at least that no deliberate effort was made to conceal facts from her. And in contrast to the testimony of plaintiff’s expert Robert Mazur, Mrs. Kim testified that defendant provided her with invoices for cash sales which were then recorded in the books for Big K and BK Sportswear that were available to plaintiff for inspection. We have no doubt based upon the testimony presented that the accounting and bookkeeping practices associated with operation of the businesses were far from scrupulous or comprehensive, but under the facts presented, substandard accounting does not equate to proof of fraudulent concealment. Sufficient evidence supports the finding on the fraudulent concealment action.

IV. The Trial Court’s Finding that the Dissolution Agreement is Valid and Enforceable.

Plaintiff also contests the trial court’s finding that the dissolution agreement between the parties is enforceable. She submits that the dissolution agreement is “void

for fraud,” and cannot be enforced against her due to her failure to “speak, read, or write English.” She adds that during negotiations defendant “falsely characterized the contents” of the dissolution agreement, misrepresented that he would “assume all outstanding debts owed to the Chinese manufacturers,” and declined to give her an opportunity to discuss the contents of the dissolution agreement with a translator or attorney.

We begin our examination of the validity of the dissolution agreement by observing that its provisions are on the surface straightforward, uncomplicated and objectively fair. The business assets and liabilities – consisting of capital machinery, merchandise and loans from Bank of the West and Washington Mutual Bank – are divided between the two partners. Responsibility for payment of any existing debts of Big K other than the two specified loans is not articulated. If any “debts owed to the Chinese manufacturers” remained outstanding, they were liabilities of the company rather than any individual, so defendant’s failure to personally assume those debts does not render the dissolution agreement unreasonable on its face.

The trial court’s finding that the dissolution agreement was not procured by fraud is supported by the evidence. While plaintiff insisted that defendant orally promised to assume the debts, defendant testified to the contrary, and again we cannot reverse a finding of the trial court based upon resolution of conflicting evidence.

Finally, we reject plaintiff’s argument that her failure to understand the dissolution agreement precludes enforcement of it against her. We find in the record numerous instances where plaintiff demonstrated a rudimentary understanding of the English language – for instance, during her identification and recognition of Exhibit N at trial – adequate at least to comprehend the clear terms of the dissolution agreement, particularly in light of her considerable business experience. More importantly, the well-established rule is that one who signs an instrument may not avoid the impact of its terms on the ground that he or she failed to read or understand the instrument before signing it. (See *Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710; *Hernandez v. Badger Construction Equipment Co.* (1994) 28 Cal.App.4th 1791, 1816–1817; *Randas v. YMCA*

of Metropolitan Los Angeles (1993) 17 Cal.App.4th 158, 163; *Izzi v. Mesquite Country Club* (1986) 186 Cal.App.3d 1309, 1318–1319.) “To the contrary, California authorities demonstrate that a contracting party is not entitled to relief from his or her alleged unilateral mistake under such circumstances.” (*Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1589.) “ ‘[O]ne who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it. If he cannot read, he should have it read or explained to him.’ [Citation.]” (*Randas, supra*, at p. 163; see also *Stewart, supra*, at p. 1589.) Having signed and accepted without protest the dissolution agreement which bears no indication on its face of unfairness, fraud or overreaching, plaintiff is bound by it and cannot now be heard to complain that its provisions are not what she expected. (*Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1673–1674; *Hadland v. NN Investors Life Ins. Co.* (1994) 24 Cal.App.4th 1578, 1589.)

For the first time in her reply brief plaintiff also argues that the dissolution agreement is void for yet another reason: that defendant failed to provide her with a Cantonese language translation of the contract in violation of Civil Code section 1632 (section 1632), subdivision (b).⁸ In accordance with a well-settled rule of appellate practice, absent justification for failing to present the claim of violation of section 1632 earlier, we will not consider an issue raised for the first time in a reply brief. (*Conservatorship of McElroy* (2002) 104 Cal.App.4th 536, 557–558; *Save the Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1181, fn. 3; *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894, fn. 10; *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1144.) If we were to consider the issue, we would find that the record fails to establish a violation of section 1632, as the evidence does not prove that the dissolution was

⁸ Plaintiff provides a single brief reference to section 1632 in her opening brief, but does not argue the issue.

negotiated in Chinese.⁹ The trial court did not commit error by finding that the dissolution agreement is valid and enforceable against plaintiff.

V. The Trial Court's Failure to Pierce the Corporate Veil.

We proceed to plaintiff's rather curious claim that the trial court erred by "refusing to pierce the corporate veil" and find defendant "individually liable" for the damages she claims. Plaintiff maintains that the Big K corporation was merely "an extension" of defendant. Therefore, she argues, under the "alter ego" doctrine defendant must be found responsible for the debts of the corporate entity.

While we agree with plaintiff that Big K was operated only nominally as a corporate entity by the parties, for several reasons we find her alter ego theory specious. First, the only principals in the operation of Big K were plaintiff and defendant. This is not a case in which an outside entity is seeking to impose liability individually on the principals of a corporation, but rather an internal dispute between the only two parties to

⁹ Section 1632, subdivision (b), reads: "*Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract or agreement:*

"(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

"(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes.

"(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

"(4) Notwithstanding paragraph (2), a loan or extension of credit for use primarily for personal, family or household purposes where the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.

"(5) Notwithstanding paragraph (2), a reverse mortgage as described in Chapter 8 (commencing with Section 1923) of Title 4 of Part 4 of Division 3.

"(6) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code." (Italics added.)

a partnership agreement. Even if the corporate veil were to be pierced, plaintiff as much as defendant would be individually liable for any existing corporate obligations or liabilities. Second, although plaintiff alleged causes of action against Big K, the present case was pursued primarily against defendant as an individual. Third, neither defendant nor Big K has been found liable on any of the causes of action. The concept of piercing the corporate veil is meaningless in the context of the case before us.

VI. The Statute of Limitations Defense.

The trial court made a specific finding on defendant's statute of limitations defense that is challenged by plaintiff on appeal. In an effort to avoid glaring statute of limitations obstacles associated with collection of alleged debts to Chinese manufacturers that were incurred many years before the present action was filed, plaintiff asserted that defendant made a \$1,000 payment on a \$210,480.92 debt owed by BK Sportswear to Oriental Enterprises, Inc. on January 13, 2004, which tolled the running of the four-year limitations period applicable to claims on open book accounts until that "date of the last item" entered on the account pursuant to Code of Civil Procedure section 337, subdivision (2). (See *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 304; *Rosati v. Heimann* (1954) 126 Cal.App.2d 51, 55–56.) The court found that the \$1,000 check written by defendant "was a gift and not payment of the debt," thus the statute of limitations was not tolled and lapsed as to the entirety of any such account. Plaintiff argues that the court's finding "is based on a failure to adequately weigh the evidence."

Without determining the evidentiary support for the trial court's finding that the \$1,000 check was a gift rather than a payment on an account, we conclude that plaintiff cannot rely on the section 337 four-year statute of limitations in this action. This is not an action by the Chinese merchant, Oriental Enterprises, Inc., to recover from defendant on an open book account or account stated for products supplied to Big K or BK Sportswear. Any such action would be governed by section 337. But here, plaintiff has sued defendant for damages related to their entirely separate oral partnership agreement, which she alleges include defendant's failure to pay the obligations of their joint business

venture. Plaintiff did not plead a cause of action for an account stated against defendant. Plaintiff cannot transmute an untimely action for breach of an oral contract, which has a two-year statute of limitations (Code Civ. Proc., § 339), into a timely action based on common counts in the absence of any evidence that the oral contract was superseded by an open book account or account stated. (*Filmservice Laboratories, Inc. v. Harvey Bernhard Enterprises, Inc.* (1989) 208 Cal.App.3d 1297, 1307.) The oral contract action cannot be resurrected nor may the period of limitations be extended from two to four years by the mere device of attempting to convert the cause into a suit based on an open book account. (*Id.* at pp. 1307–1308; *Tillson v. Peters* (1940) 41 Cal.App.2d 671, 676.) Moreover, the trial court found, and we have affirmed the finding, that pursuant to the oral partnership and written dissolution agreements defendant did not have any individual obligation to pay the debts of the company to the Chinese merchants. Thus, judgment was properly entered in favor of defendant on the causes of action stated.

VII. The Trial Court's Evidentiary Rulings.

Plaintiff also disputes “numerous evidentiary rulings” by the trial court which she complains were “extremely prejudicial” to her. However, she has set forth only a “few examples of the many outstandingly bad evidentiary decisions” by the court, all of which relate to admission of somewhat nebulous references by defendant to plaintiff’s practice of “money laundering” by funneling money received from other accounts or businesses to and from the Big K account. Additional evidence was then adduced to explain what defendant meant by his accusation of money laundering. Plaintiff argues that the testimony was “unsupported and highly speculative.”

“ ‘[A]n appellate court reviews any ruling by a trial court as to the admissibility of evidence for abuse of discretion.’ [Citation.]” (*Dart Industries, Inc. v. Commercial Union Ins. Co.* (2002) 28 Cal.4th 2059, 1078.) A judgment will not be reversed for erroneous admission of evidence unless the reviewing court concludes it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. (*People v. Geier* (2007) 41 Cal.4th 555, 586; *Great American Ins. Cos. v. Gordon Trucking, Inc.* (2008) 165 Cal.App.4th 445, 449; *Carnes v. Superior*

Court (2005) 126 Cal.App.4th 688, 694.) We find nothing in the record that establishes abuse of discretion by the trial court. Defendant’s testimony about plaintiff’s use of the Big K accounts and records to accommodate sales or invoices from other businesses, particularly her Cherry Way accounts, was quite probative on the issue of the profitability of Big K. Additionally, this testimony responded to the claim by plaintiff’s counsel that the books of Big K were not accurately kept. The remaining testimony, much of it elicited from defendant during cross-examination by plaintiff’s counsel, was relevant to explain defendant’s concept of the meaning of the term money laundering. Plaintiff also objects to the admission of “improper hearsay” statements by defendant, but we find no hearsay evidence in the examples and excerpts from the record specified in plaintiff’s brief. Plaintiff has not established any error in the trial court’s evidentiary rulings.

Accordingly, the judgment is affirmed. Costs on appeal are awarded to defendant.

Graham, J.*

We concur:

Marchiano, P. J.

Margulies, J.

* Retired judge of the Superior Court of Marin County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.